

EXCISION NO. G-00K3)

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

and

[Agency]

Record of Proceedings

[ 3

Date: November 14, 1533

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For the Foreign Service Grievance Board:

Presiding Member:

Arthur Stark

Board Members:

Martha I. Burns

Richard S. Owen

Special Assistant  
to the Board:

Representative for the Grievant:

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Representative for the [Agency]

I. GRIEVANCE

[The grievant] was reappointed to the Foreign Service in [year], having been required to resign in [year] because of a rule about overseas assignments of an FSO couple. In [year] he asked about purchasing retirement credit for the 14 years during which he was "in the status of forced resignation from the Foreign Service". On being told by [his agency] that there was no authority for purchasing such credit, he filed a grievance in [date]. In [month] the [agency] rejected the grievance, explaining that it was untimely[...]. In [date] the grievant submitted his claim to the Board, stating that his grievance was timely, and[...]alleging that the [agency] had violated its own published policy. The Board made a preliminary determination that the grievance was timely, but stated that it would limit its consideration to the question:

Did the [agency] violate the terms under which grievant was permitted to return to the Service when it denied grievant the opportunity to purchase service credits?

II. 3ACKGRCUKD

The grievant was a [member of the] Foreign Service when he married another [member]. Under regulations then in effect, only one member of [a] couple could be assigned to a given post abroad. When [the grievant<sup>T</sup>s spouse] received an overseas assignment, the grievant resigned and accompanied [the spouse] abroad. In 1971 State, AID, and USIA adopted a

joint policy inviting [members] who had been required to resign because of marriage to apply for reappointment. The grievant accepted this invitation in [year] and re-joined the Service at [grade], one grade above his [year of resignation] level.

### III. POSITIONS OF THE PARTIES

#### Grievant

The grievant claims that the [agency's] refusal to permit him to purchase retirement credit is a violation of the [agency's] own terms of reappointment. He notes that the [agency's] Notice of [date] states the [agency's] "intent of rectifying previously forced resignation of [spouses of members] because of marriage...". He also cites Title VII of the Civil Rights Act of 1964, one of whose objectives is to restore victims of unlawful employment practices "to a position where they would have been were it not for the unlawful discrimination". The grievant asserts that courts, in deciding Title VII cases, also use the term "rectification" of past discrimination. [He] argues that Title VII and the [agency's] invitation to re-join the Service have identical objectives. Moreover, courts have ruled in Title VII cases that "mere rehiring" is "an insufficient remedy". He concludes that "rectification" in his case requires permission to purchase retirement credit for his period of forced unemployment since, as a Foreign Service [spouse] frequently located overseas, he

could not pursue his own career and thus could not acquire social security or other retirement credit.

Agency

The [agency] says its change in policy regarding the employment status of [members] married to [members] did not create new legal rights. There remains no authority for the [agency] to give retirement credit for a period during which an individual was not employed by the [agency] . IV.

DISCUSSION AND FINDINGS

When it agreed to accept the grievance, the Board made a preliminary finding that the grievance was timely filed with the agency. The agency later reiterated its position that the grievance was stale, holding that it was filed more than three years after the grievant's reappointment.

As stated earlier , the issue here is whether the [agency's] denial of the opportunity to purchase service credit violated the terms of the grievant's reappointment. In [the grievant's] case, that denial occurred in [date]. The Board finds, accordingly, that [date] is the start of the 3-year period during which a grievance may be filed under the provisions of Section 1104 of the Foreign Service Act of 1930, which states:

(a) A grievance is forever barred unless it is filed with the [agency] within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the [agency] and the exclusive representative. There shall be excluded from the computation of any

such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

The grievance is therefore timely.

In bringing his claim to the Board, the grievant contends that the denial of the opportunity to purchase service credit "is a violation of the terms under which I was permitted to return to the Service", and that "the [agency] violated its published policy...". The earliest statement of policy cited by the grievant is [correspondence number and date] , whose relevant portion reads:

A [member] who was required to resign from the Foreign Service because of marriage [to another member] will be given opportunities for reentry into the Foreign Service at a class commensurate with his qualifications, if there is a need for his services and if he meets current conditions of employment.

The next document referenced by the grievant is the [agency] Notice dated [date], with the heading reappointment of [members married to members] . Pertinent portions declare that:

Until recent years [members marrying members] were forced to resign when they married. To remedy such an inequity the [agency], as outlined in the previously cited [correspondence], anticipated steps for reappointment for [members] who were "Required to resign from the Foreign Service because of marriage".

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To implement fully the original intent of rectifying previously forced resignation of [members] because of marriage, the [agency] intends to reexamine on a

priority basis all pending reappointment applications as well as to accept any new applications submitted in response to the Telegram.

The codification of the revised policy is found in. [regulations], which reads:

Former employees who resigned from the Foreign Service because of marriage will be given an opportunity for reentry into the Foreign Service at a class commensurate with their qualifications if there is a need for their services and if they meet current conditions of employment.

Taken together, these three excerpts show that the [agency] intends to "remedy" the past "inequity" and "rectify" the "previously forced resignation" by the specific device of permitting the affected former employees to apply for reemployment, and that it will expedite the handling of their applications. No other remedies are promised. The grievant ultimately took advantage of the opportunity to apply and was reappointed.

The Board has considered further whether any legislative provision exists for permitting the grievant to purchase retirement credit. Section 816 (a) of the Foreign Service Act of 1980 defines as creditable service "except as otherwise specified by law, all periods of civilian and military and naval service..." We find that the time between the grievant<sup>1</sup>'s resignation and his reappointment was not a "period of service". Section 816 lists other situations which provide creditable service, such as employment by the Congress and

employment by an employee organization- None of the specified categories is applicable to the grievant.

Additionally, Section 816 cites section 3332 of Title 5, United States Code as the general guide for determining creditable service. That section states, in paragraph (b) :

Credit may not be allowed for a period of separation from the service in excess of 3 calendar 5ays.

There is thus no basis for considering as creditable service the period when the grievant was not employed by the [agency] , and hence there is no basis for permitting purchase of service credit. We therefore conclude that the [agency] did not violate the terms under which the grievant was permitted to return to the Service when it denied him the opportunity to purchase service credits.

The record of this grievance includes considerable material involving equal employment opportunity considerations. That material, however, is irrelevant to the issue

a^ nano . VI. DECISION

The grievance is denied.